

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICHARD VACCARIELLO on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

XM SATELLITE RADIO INC.,

Defendant.

08 Civ 5336 (CS)

CLASS ACTION

**AFFIDAVIT OF RICHARD VACCARIELLO IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

STATE OF NEW YORK)
)
) ss.:
COUNTY OF WESTCHESTER)

RICHARD VACCARIELLO, being duly sworn, deposes and says:

1. I am the Plaintiff herein and a Certified Public Accountant. I maintain detailed records of my business and personal dealings.

2. On or about May 9, 2008, I first learned that XM Satellite Radio, Inc. ("XM") automatically renewed my service when I received a bill from XM in the amount of \$359.64 for an additional three years of service.

3. I have examined the written contract, attached as Exhibit A to the Declaration of Anthony J. Dreyer in Support of Defendant's Motion to Dismiss. I did not receive that contract when I signed up for XM Satellite Radio service, nor at any point thereafter.

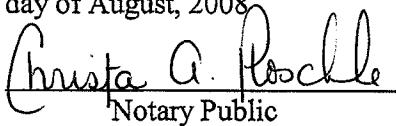
4. I did not receive a letter or other communication from XM informing me that my XM service was going to be automatically renewed for a three-year period or otherwise.

5. Prior to reviewing the Declaration of Anthony J. Dreyer in Support of Defendant's Motion to Dismiss, I had never seen the documents attached as Exhibits A and B thereto.

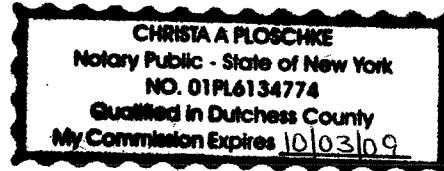


Richard Vaccariello

Sworn to before me this 18th
day of August, 2008



Christa A. Ploschke
Notary Public



PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action. I am employed with Wolf Popper LLP, whose offices are located in the City and State of New York. My business address is: 845 Third Avenue, New York, NY 10022.

That on August 20, 2008, via ECF, I served the foregoing documents entitled: AFFIDAVIT OF RICHARD VACCARIELLO IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS in this action, in particular on the following counsel for Defendant:

Kenneth Alan Plevan
Anthony Joseph Dreyer
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
212-735-3000
Fax: 917-777-3410
Email: kplevan@skadden.com
adreyer@skadden.com

Counsel for Defendant XM Satellite Radio Inc.

BY ELECTRONIC MEANS: I caused the above-referenced document to be uploaded onto the ECF system for the United States District Court, Southern District of New York.

I declare under penalty of perjury under the laws of the United States and the State of New York that the foregoing is true and correct.

Executed on August 20, 2008, New York, New York.

s/ Michele F. Raphael

Michele F. Raphael